

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  U S WEST COMMUNICATIONS, INC., AND CITIZENS TELECOMMUNICATIONS COMPANY OF IOWA	DOCKET NOS. SPU-99-31 WRU-00-29-3047
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**ORDER APPROVING PARTIAL SETTLEMENT AGREEMENT,  
NOT DISAPPROVING PROPOSED REORGANIZATION,  
AUTHORIZING TRANSFER OF CERTIFICATE,  
ALLOWING DISCONTINUANCE OF SERVICE,  
WAIVING 199 IAC 18.2,  
DESIGNATING AS ELIGIBLE TELECOMMUNICATIONS CARRIER,  
AND PERMITTING ADOPTION OF PRICE PLAN**

(Issued May 5, 2000)

On November 9, 1999, U S WEST Communications, Inc. (U S WEST), and Citizens Telecommunications Company of Iowa (Citizens) (collectively, the Applicants) filed a joint application with the Utilities Board (Board) for approval of (1) reorganization, (2) discontinuance of service by U S WEST, (3) transfer of certificate of public convenience and necessity for the exchanges involved, (4) transfer of interexchange service of U S WEST to Citizens for the exchanges involved, (5) waiver of the slamming rule, 199 IAC 22.23, if necessary, (6) designation of Citizens as an Eligible Telecommunications Carrier (ETC) in each of the exchanges involved, and (7) assumption by Citizens of the U S WEST price plan at the rates in effect at the date of closing for the exchanges involved, pursuant to Iowa Code §§ 476.77, 476.20, and 476.29 (1999). Additionally, the

Applicants requested that the Board affirmatively state that it did not object to the Federal Communications Commission (FCC) granting study area waivers, or to any reconfiguration of study area boundaries, for the Iowa exchanges involved in the reorganization. The underlying transaction involves the sale of 32 U S WEST exchanges to Citizens. The Board identified the joint application as Docket No. SPU-99-31 and the slamming rule waiver as Docket No. WRU-00-29-3047.

Pursuant to Iowa Code § 476.77(2) and a motion filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate), the Board set the application for hearing, extended the review period by 90 days, and set a procedural schedule by an order dated December 16, 1999. AT&T Communications of the Midwest, Inc. (AT&T), was granted intervention by an order dated December 30, 1999.

On February 23, 2000, the Applicants and Consumer Advocate filed a proposed partial settlement agreement and a joint motion for approval of the partial settlement agreement. The proposed settlement was intended to resolve all issues between the Applicants and Consumer Advocate, except the issue concerning the acquisition premium to be paid by Citizens. The only other party to this docket, AT&T, was not a party to the proposed settlement. AT&T did not file comments opposing the partial settlement agreement, nor participate in the hearings held in this docket.

On February 29, 2000, the hearing on the application opened as scheduled. Following discussion on procedural matters, the hearing was continued to March 29, 2000, at which time the witnesses were made available for cross-examination on the prefiled testimony entered into the evidentiary record and for questions related to the partial settlement agreement. Briefs were filed by Applicants and Consumer Advocate on April 10 and 17, 2000.

Iowa Code § 476.77(3) states:

3. In its review of a proposal for reorganization, the board may consider all of the following:
  - a. Whether the board will have reasonable access to books, records, documents, and other information relating to the public utility or any of its affiliates.
  - b. Whether the public utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is impaired.
  - c. Whether the ability of the public utility to provide safe, reasonable, and adequate service is impaired.
  - d. Whether the ratepayers are detrimentally affected.
  - e. Whether the public interest is detrimentally affected.

After considering the statutory factors, the Board issued an order on April 28, 2000, indicating that if the parties affirmed the Board's understanding that the parties to the settlement are to be bound by the most rigorous commitments made in the case, the Board would be able to issue an order approving the partial settlement agreement, and not disapproving the reorganization. On May 1, 2000, the Applicants filed a letter representing "that

the Board's understanding is correct." Consumer Advocate filed a response indicating, "OCA agrees with all provisions of the Board's most recent Order in this proceeding."

### **STATUTORY FACTORS**

The statutory factors listed in Iowa Code § 476.77(3) were discussed in detail in the Board's April 28, 2000, order. The discussions relating to those factors will not be duplicated in this order. Because the parties are bound by the most rigorous commitments made at any point in the record in this case, the Board can find that the statutory factors are satisfied. The Board will approve the partial settlement agreement as reasonable when viewed in light of the commitments made in the whole record, consistent with law, and in the public interest. (See 199 IAC 7.2(11)). The Board will not disapprove the reorganization.

### **OTHER MATTERS**

The Board will waive the requirement of 199 IAC 18.2 that all records required by the Board's rules be kept within the state of Iowa. The Board and its staff have been assured reasonable access to the records of Citizens that are to be kept in Plano, Texas. (Tr. 181-82)

Examples of U S WEST's noncompliance with service quality standards in the past were brought to light through this proceeding and the Board will not

allow this situation to be continued by Citizens. The Board acknowledges that it may take some time to bring the service quality into complete compliance.

Continuing improvement in the service quality over the 12 months following the date of closing is expected, with full compliance after that interim period. (See Article IV.3 Partial Settlement Agreement). Proposals for enhanced reporting mechanisms agreed to by Consumer Advocate and the Applicants as a part of the settlement will be required to be filed with the Board within 60 days of the date of this order. To ensure that the Board will have all of the information necessary to monitor Citizen's retail service quality, the Board directs its staff to participate in the meetings between Applicants and Consumer Advocate to develop enhanced reporting mechanisms. Until those mechanisms are filed with and approved by the Board, Citizens will be required to file information on its performance in each of the deficient areas on a monthly basis, beginning 30 days after the date of certification.

Turning to the list of other matters in the first paragraph of this order, Iowa Code § 476.20 provides in relevant part that a utility shall not discontinue service to a community unless permission to do so is obtained from the Board. Under 199 IAC 7.12(5), an application to discontinue service incident to a utility property transfer will be granted "if the board finds the transferee is ready, willing, and able to provide comparable utility service." Finally, Iowa Code § 476.29(3) provides for the transfer of a local exchange certificate of public convenience

and necessity, subject to the Board's approval pursuant to Iowa Code § 476.20(1). The Board finds that Citizens is ready, willing, and able to provide comparable utility service such that approval of the discontinuance of service by U S WEST will be granted, effective upon the initiation of service by Citizens. Upon Board approval of appropriate tariffs and maps for Citizens and a statement by Citizens that a 2-PIC methodology for dialing parity is available for all customers, the Board will issue a certificate of public convenience and necessity to Citizens, and terminate this proceeding. The proposed tariff should incorporate the customer billing credit obligations detailed in the partial settlement agreement.

As part of the purchase agreement, the local exchange customers of U S WEST will be transferred to Citizens and Citizens will provide intraLATA long distance service to those customers presently being served by U S WEST. Board rules normally prohibit making any changes to a customer's preferred service provider without first obtaining written or recorded verification of the customer's consent to the change. See 199 IAC 22.23. Applicants request a waiver of that rule to permit the transfer without obtaining and verifying the consent of every U S WEST customer in these 32 exchanges.

The purpose behind the Board rule is to prevent unauthorized changes in a customer's telecommunications service, a form of fraud known as "slamming." Inherent in the grant of authority to discontinue service by one company and the

transfer of its certificate of public convenience and necessity is recognition that the customers will be transferred to the new certificate holder. The Board finds that this transfer of all customers to the new certificate holder is not a prohibited change in telecommunications service under 199 IAC 22.23(2), which states that "[N]o telecommunications carrier shall **submit a preferred carrier change order** to another service provider." No change order is being submitted in the situation of discontinuance of service by one company and a transfer of its certificate to another company pursuant to Iowa Code §§ 476.20 and 476.29 (1999). A waiver is not necessary, because 199 IAC 22.23 is not applicable to this transfer of customers.

U S WEST is currently designated as an ETC, pursuant to 47 U.S.C. § 214(e), in its Iowa exchanges. Citizens requests designation as an ETC for the 32 exchanges upon the close of the transaction. Citizens has agreed to satisfy all of the requirements and will offer all of the services designated for universal service support in chapter 39 of the Board's rules. (Tr. 130) No party opposes designation of Citizens as an ETC and the Board will grant its request for that designation.

In considering the effect on ratepayers, the Board noted in its April 28, 2000, order that Applicants had asserted that the reorganization would be reasonably transparent to the ratepayers because of Citizens request to adopt

U S WEST's local service rates and charges and the U S WEST price plan. The current price plan is effective until November 2001, and has the possibility of being continued for another three years. The Board will approve the request of Citizens to adopt the price plan of U S WEST.

According to the joint application, a condition of this reorganization is receipt of the necessary approval of the FCC. The joint application filed with the FCC includes a petition for a study area waiver. It has been the FCC's policy to not accept such petitions until the state regulatory agency has indicated that it does not object to changes in the study area boundaries. The Board affirmatively states that it does not object to the request by Applicants that a study area waiver be granted by the FCC.

### **ORDERING CLAUSES**

#### **IT IS THEREFORE ORDERED:**

1. The motion to approve the partial settlement agreement filed by U S WEST Communications, Inc., Citizens Telecommunications Company of Iowa, and the Consumer Advocate Division of the Department of Justice on February 23, 2000, is granted. The approval is based on the Board's interpretation as expressed in its April 28, 2000, order in this docket, and the affirmation by the parties to the partial settlement agreement of the Board's interpretation.

2. The Board does not disapprove the joint application for approval of reorganization filed by U S WEST and Citizens on November 9, 1999.

3. Applicants shall promptly file with the Board any material changes to the proposed reorganization that may occur, up to the time of closing. The filing shall include an analysis of the impact of any changes. Any closing shall be delayed by a minimum of five business days to permit the Board and the parties to this proceeding an opportunity to evaluate the potential impact of the change.

4. The request for a transfer of certificate of public convenience and necessity is granted, subject to the requirements that follow:

a. At least 30 days prior to closing, Citizens shall file a proposed tariff for Board review and approval that will incorporate the commitments discussed in the April 28, 2000, order and this order, including all customer billing credit obligations.

b. At least 30 days prior to closing, Citizens shall file proposed service area maps, or adopt the current U S WEST service area maps for these 32 exchanges.

c. At least 30 days prior to closing, Citizens shall file a statement that a 2-PIC methodology for dialing parity is available for all customers.

5. Upon approval of tariffs to reflect the prices, terms, and conditions of local exchange service in Iowa offered by Citizens, approval of service area maps, and a statement that a 2-PIC methodology for dialing parity is available for all customers, the Board will issue a certificate of public convenience and necessity in the name of Citizens Telecommunications Company of Iowa, allowing it to provide local exchange service in Iowa.

6. At the time Citizens begins to provide service US WEST shall be allowed to discontinue service to the 32 exchanges.

7. Citizens is hereby ordered to make the following filings:

a. As soon as the plans are finalized, and in no event later than 30 days from the date of this order, Citizens shall file the details of its plans to address the service problems in those exchanges where U S WEST has experienced repeated violations of the trouble report rule, 199 IAC 22.6(3)"h."

b. Citizens shall file monthly service quality reports based upon the service quality standards in 199 IAC 22.6. Such reports shall be filed 30 days after the end of each month beginning with the first full month Citizens provides service until the Board orders otherwise.

c. Prior to closing, and each month thereafter, Citizens shall file updates detailing the progress experienced in establishing a cellular loaner program, until the program is implemented.

d. Prior to closing, Citizens shall provide the names and business locations of management personnel having responsibility for its Iowa exchanges. Additionally, Citizens shall provide updated information detailing the number and locations of personnel who will be providing service to the 32 Iowa exchanges.

e. Citizens shall file a budget of capital improvements it anticipates will be necessary to upgrade the facilities in the 32 exchanges, with estimated starting and completion dates for each capital improvement. A budget shall be filed at least 90 days following closing, and every six months thereafter, until the end of the four years specified in paragraph ten to the partial settlement agreement.

8. The Board will approve a waiver of 199 IAC 18.2.

9. No waiver of 199 IAC 22.23 is necessary as discussed in the body of this order.

10. Pursuant to 199 IAC 39, Citizens' request that it be designated an Eligible Telecommunications Carrier for purposes of 47 U.S.C. § 214(e) is granted.

11. Citizens' request to adopt U S WEST's existing price regulation plan, pursuant to Iowa Code § 476.97, beginning with the U S WEST prices in effect as of the date of closing, is granted.

12. The Board does not object to the request by Applicants that a study area waiver be granted by the FCC.

**UTILITIES BOARD**

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.  
Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 5<sup>th</sup> day of May, 2000.